

1 or opportunities. You have to have the right
2 structure.

3 If you have the right structure
4 with the right partners, you can get through
5 a lot. If you have the wrong structure with
6 conflicting interests or interests that are
7 misaligned in terms of the core interests of
8 the company, then no genius can run it right.

9 So my principal focus is on
10 structure and interests and motives, and long
11 term symmetry of interests. People say things
12 to you along the way that life is going to be
13 tough or not tough, that's why you wake up in
14 the morning. You wake up in the morning to
15 deal with today's problems. If the problem
16 comes up, you deal with it.

17 Q You are a skilled negotiator. You
18 have experience, correct?

19 A Yes.

20 Q These types of comments that Mr.
21 Roberts made to you, is it fair to say that
22 they were just nuggets of information that you

1 used that you shared with your colleagues at
2 the NFL in order to determine what decisions
3 to make in your negotiations with Comcast? In
4 other words it's just one element of the
5 entire soup so to speak in determining what
6 decision the NFL should make.

7 A No, it's not fair to say that.

8 Q Why is that?

9 A Because he was talking about the
10 cable industry doing things to us. He's not
11 the cable industry; he's Comcast. When
12 someone says the cable industry, you are going
13 to have your relations with the cable industry
14 are going to get interesting, or your
15 relations with the cable industry are going to
16 get complicated, to me it says collaboration.
17 That is a problem. That is not chick peas and
18 peanuts and soup.

19 Q When you made these statements
20 prior to the January 27th conversation, did
21 you also share those comments with the other
22 owners and other folks at the NFL?

1 A I shared them with key owners,
2 yes, not with 32 owners. I don't want to read
3 them in the newspapers, and I don't want
4 people to come back to me and say, well, now
5 you are getting ad hominem, now you are trying
6 to use that kind of a statement to steer us in
7 a different direction. So it's a careful
8 balance between what you hear yourself, what
9 you say, what you tell others. So yes I told
10 owners who mattered who were going to be
11 involved with the decision, this is something
12 you've got to think about. But you can't go
13 through life making decisions because people
14 threaten you. You got to listen. You got to
15 make your judgments. You have to understand
16 whether you have your contractual rights
17 straight. You have to understand if there is
18 legal recourse for something that somebody
19 says to you. And you move on to the next
20 problem. I was trying to keep a team in New
21 Orleans here after Katrina. So I made
22 statements. It's not today's problem. I'm

1 getting on a plane and going to New Orleans to
2 figure out how we keep a team in the Super
3 Dome. So I don't sit around and gaze at my
4 navel. I move on to the next problem.

5 Q On any occasion when Mr. Roberts
6 made these statements to you, warnings, to use
7 your word, did you ever ask Mr. Roberts, well,
8 who are you speaking for, the whole industry?
9 Or just Comcast?

10 A He talked about relationships that
11 he had with Time Warner and various contexts,
12 they were negotiating with Time Warner,
13 Comcast, to see who got which Adelphia
14 systems, because Adelphia was having financial
15 problems. They had other relationships. He
16 talked about various cable companies that he
17 was in regular conversations with, who could
18 be helpful or not helpful. I didn't have to
19 guess who they were.

20 Q But did you ask him on any
21 occasion when he made these statements to you
22 whether he was speaking for the industry or

1 just Comcast? Was he jockeying for position?

2 Was he trying to scare you, threaten you?

3 A No. Someone threatening you, you

4 are going to have to be more specific. You

5 know the North Koreans are threatening; you

6 don't have to say, be more specific as to what

7 you are going to do with your missile over

8 Japan.

9 Q Let's move to paragraph five.

10 A I'm not masochistic, put it that

11 way.

12 Q Thank you.

13 If you wouldn't mind looking at

14 paragraph five.

15 A Yes.

16 Q You state, shortly after I retired

17 from my position as commissioner, Comcast took

18 retaliatory steps. Were there multiple steps

19 that you are aware of, or was there one step,

20 that being the one where they moved the NFL

21 Network to a premium tier?

22 A I guess from that standpoint maybe

1 that is singular. I am not talking about
2 other steps; I'm talking about the shift in
3 distribution.

4 MR. SCHONMAN: That'll be it,
5 Your Honor.

6 JUDGE SIPPEL: Redirect?

7 MR. PHILLIPS: No, Your Honor.

8 MR. CARROLL: Your Honor, I have
9 some questions. See, now I thought we were in
10 agreement, Mr. Tagliabue, but I have a few
11 things to follow up on.

12 RE CROSS EXAMINATION BY COUNSEL FOR COMCAST

13 BY MR. CARROLL:

14 Q Was it part of your negotiating
15 strategy with Mr. Roberts to try to increase
16 his anxiety while you were negotiating with
17 him?

18 A You normally try to increase
19 people's anxiety, yes.

20 Q And remember, you talked with your
21 team about what things you could tell Mr.
22 Roberts to try to scare him and make him more

1 anxious; right?

2 A I don't know that we did that.

3 Mr. Goodell wrote a memo in which he said -
4 which you showed me in my deposition in which
5 he said I had been successful in raising Mr.
6 Roberts' anxiety. And I went back and looked
7 at when that conversation was, and it was a
8 few days before we had invited Mr. Roberts to
9 attend a meeting of our broadcast committee.

10 And it was extremely unusual for
11 us to invite an outside party to a meeting of
12 the broadcast committee. And one of the
13 reasons we did it was because Mr. Roberts was
14 telling me that he wanted to speak directly to
15 the owners who were the decision makers, and
16 he didn't want any of our executives to be a
17 filter. He was the only one of the competing
18 parties we would invite to a meeting. And
19 among other things I didn't want him to come
20 away with a conclusion that the deal was his.
21 So I'm sure I did tell him, at that juncture,
22 I did tell him things that were designed to

1 raise his anxiety.

2 JUDGE SIPPEL: What was the date
3 of that meeting?

4 THE WITNESS: We had a meeting in
5 mid-December of our broadcasting committee.

6 JUDGE SIPPEL: Of what year?

7 THE WITNESS: Of 2005.

8 MR. CARROLL: During these
9 negotiations?

10 THE WITNESS: During these
11 negotiations.

12 JUDGE SIPPEL: Thank you, I just
13 wanted the timeframe.

14 BY MR. CARROLL:

15 Q So you would acknowledge that on
16 your side, as part of this hard nosed
17 negotiation, you did some things to try to
18 increase my client's anxiety?

19 A Yes.

20 Q You consider that standard
21 negotiating technique for yourself?

22 A Yes.

1 Q And you agree with me that in the
2 past you've been very hardnosed with Comcast
3 in how you negotiate with Comcast, yes?

4 A No.

5 Q You remember that in 2004 you
6 referred to this you had negotiations with Mr.
7 Roberts, you threatened Mr. Roberts in 2004.

8 A I don't know what you mean by
9 threatened Mr. Roberts.

10 Q Didn't you issue a precondition to
11 Comcast in 2003-2004 where you said if you
12 want to talk to us about getting games rights
13 you have to be carrying our NFL Network.
14 Didn't you do that?

15 A I don't recall. Maybe I did, but
16 I don't recall that.

17 Q Let me read you an excerpt from
18 Mr. Hawkins' testimony in this courtroom two
19 days ago. We have the transcripts for this,
20 Your Honor. There is nothing highly
21 confidential in this question and answer.

22 MR. PHILLIPS: Your Honor, I

1 don't understand exactly how this is within
2 the scope.

3 MR. CARROLL: Oh, Your Honor, you
4 asked him all about threats and negotiations,
5 and that's all I'm following up on.

6 JUDGE SIPPEL: It's close but
7 I'll permit it.

8 BY MR. CARROLL:

9 Q At page 237 of the transcript two
10 days ago, line 17, I asked Mr. Hawkins, did
11 the NFL ever threaten any operators that
12 unless they distributed NFL Network at a
13 certain level they would not be allowed to bid
14 on the eight-game package, the Thursday-
15 Saturday package.

16 Mr. Hawkins' answer: Putting aside
17 the characterization of threat I would say
18 that probably in '03-'04 the NFL told Comcast
19 in particular that broad distribution of the
20 NFL Network was a precondition to being taken
21 seriously as a bidder if you want conditional
22 yes.

1 Does that jog your memory that in
2 '03-'04 you told my client, we won't sit down
3 with you at the table unless you come up and
4 agree to distribute NFL Network?

5 A Could you read that again to me,
6 or let me read it?

7 Q Would you like to read it?

8 A Yes.

9 MR. CARROLL: Your Honor, may I
10 hand it up?

11 JUDGE SIPPEL: Please do.

12 MR. CARROLL: Would you like a
13 copy as well?

14 JUDGE SIPPEL: Yes, I should take
15 that.

16 MR. CARROLL: How about Mr.
17 Phillips?

18 JUDGE SIPPEL: Where are we? On
19 this page again?

20 MR. CARROLL: Page 737, Your
21 Honor, 737, line 17 was my question.

22 JUDGE SIPPEL: Did the NFL ever

1 threaten?

2 MR. CARROLL: Yes, that's the
3 question.

4 JUDGE SIPPEL: All right, Mr.
5 Tagliabue, just take your time. Read what you
6 want.

7 (Pause.)

8 THE WITNESS: Okay, I've read it.

9 BY MR. CARROLL:

10 Q Does that job your memory that in
11 2003-2004 you took the position with my client
12 that as a precondition for their being able to
13 negotiate with you for games they had to come
14 and agree they give distribution to the NFL
15 Network?

16 A It doesn't jog my mind, no, but
17 Mr. Hawkins said it. It may have happened.

18 Q You don't disagree with it?

19 A I don't know one way or the other.

20 Q So basically - do you think that
21 is a threat, if you do that to my client?

22 A No, because he said, put aside

1 threat.

2 Q So it's a threat if my client says
3 to you, what was your phrase again, let me
4 find it, not be positive for our relationship,
5 that is a threat. But if you tell my client
6 we won't negotiate with you unless you carry
7 our network, that's not a threat; that is your
8 position?

9 MR. PHILLIPS: Objection, Your
10 Honor. It's not exactly what the transcript
11 says Mr. Hawkins says.

12 JUDGE SIPPEL: Well, let's get
13 the exact words then.

14 MR. PHILLIPS: I believe what it
15 says, and you can read it, Your Honor, it
16 says, would not be taken seriously as a
17 bidder.

18 JUDGE SIPPEL: They are two
19 different things.

20 MR. CARROLL: I'll put another
21 question.

22 JUDGE SIPPEL: Let the witness

1 answer that one.

2 MR. CARROLL: He can answer that
3 one.

4 THE WITNESS: I mean, like I
5 said, I don't recall this, but if Mr. Hawkins
6 is saying that someone told Comcast in
7 whenever this was, 2003-2004 that you would -
8 it would be very helpful in your interest in
9 partnering with the NFL Network to be
10 enthusiastic about the NFL Network and give it
11 broad distribution, that would be a very
12 positive thing. That may have been said. It
13 probably would have been true against a
14 backdrop where they hadn't been serious in
15 negotiating in earlier years. But it's
16 different from saying, there are no
17 negotiations, you can't walk in the room
18 unless you give broad distribution to the NFL
19 Network.

20 So as I say, I don't remember
21 this, but the way Mr. Hawkins describes it I
22 can't say it didn't happen.

1 Q Mr. Hawkins didn't say it would be
2 helpful. He said it was a precondition. You
3 see that word?

4 A Precondition to being taken
5 seriously; a precondition to having
6 credibility in the room, not to getting in the
7 room, which is what you asked.

8 Q You wouldn't take my client
9 seriously at the negotiation table for rights
10 unless they, as a precondition, agreed to
11 carry your network. You basically extorted
12 them.

13 JUDGE SIPPEL: Well, now wait a
14 minute. I mean he can respond to that, of
15 course. But I mean again -

16 MR. CARROLL: I'll strike the -

17 JUDGE SIPPEL: Stick with the
18 language.

19 BY MR. CARROLL:

20 Q You imposed a precondition on my
21 client -

22 A We told your client, and it was

1 part of his - what I called in my deposition
2 his paranoia - that when I started
3 conversations with him at the Philadelphia
4 Eagles game in September of 2003, his attitude
5 was, you are not going to take us seriously.
6 You have never taken the cable industry
7 seriously.

8 I told him one of the first
9 television contracts I'd ever done was with
10 the cable industry, a major contract. If
11 someone told him, and I don't recall saying
12 it, that in order to get that past behind us,
13 which is what you read before that we did get
14 the past behind us, developing a business
15 relationship with the League would be helpful.
16 Yes, and I did the VOD deal with him to give
17 Comcast exclusive rights to video on demand
18 NFL highlights in order to get past the
19 history and to develop a positive working
20 relationship.

21 So if someone said that in that
22 context, I can't say it didn't happen. But

1 it's different from saying, do the deal or you
2 are not getting in the room. And it's not
3 extortion, either. It's trying to help
4 someone develop a relationship that could
5 produce mutually advantageous business
6 relationships. It's different from extortion
7 in my book.

8 Q You told my client - and these are
9 Mr. Hawkins' words -

10 A I've already said I don't remember
11 that. If he said it, I have no way of saying
12 he is wrong. I am telling you the context in
13 which we were having conversations about
14 building a better business relationship, and
15 one of those ways was to start doing business
16 on some simple things which might help get a
17 complicated thing done. So if you are going
18 to go back to the same language again -

19 Q No, I'm going to ask a different
20 question.

21 In your view telling someone that
22 it's a precondition to taking them seriously

1 in negotiations that they do something else
2 for you, is that a threat?

3 A No.

4 Q Not if it comes from you?

5 A Not if it's in the context in
6 which these conversations were being had.

7 Q And in 2004 after you signed the
8 contract with my client, did you impose a
9 moratorium on deals with my client and the
10 local teams?

11 MR. PHILLIPS: Your Honor,
12 seriously, this is way beyond the scope of the
13 questions that were asked.

14 JUDGE SIPPEL: I'll sustain the
15 objection.

16 BY MR. CARROLL:

17 Q You talked in your answers to the
18 Bureau's questions about collaboration at one
19 point, industry collaboration. Now you
20 agreed with me when I asked the questions
21 earlier that you are unaware of any
22 collaboration between Mr. Roberts and Comcast

1 with any other cable company related to your
2 business at all. Correct?

3 A I think that is basically what I
4 said, yes. Different question.

5 Q And you referred during the
6 Bureau's questions to Mr. Kraft having
7 referenced the conversation. Do you know, are
8 you familiar with the fact that Mr. Kraft has
9 testified he didn't know there were tiering
10 rights until the lawsuit was filed?

11 A I know you told me you took his
12 deposition. I don't have the foggiest idea
13 what he said.

14 Q You are not claiming that you ever
15 discussed tiering rights with Mr. Kraft, are
16 you?

17 A As I testified in my deposition, I
18 told him that I made presentations to the
19 committee about broad distribution, narrow
20 distribution, mid-level distribution. I think
21 I didn't use the word, tiering, because it's
22 not a big part of my lexicon, talking about

1 wide distribution, narrow distribution.

2 Q And last question.

3 A Including with Mr. Kraft.

4 Q Last question as a follow up to

5 the Bureau's questions, you were asked in

6 particular about Time Warner relations, do you

7 remember that? You gave some testimony about

8 relations between Comcast and Time Warner.

9 A Yes.

10 Q Okay. Isn't it a fact that during

11 renegotiations with my client, at the end of

12 2005, you asked my client to talk to Time

13 Warner and see if they could convince Time

14 Warner to carry your network?

15 A I did that?

16 Q Your side, the NFL.

17 A I don't think I did it, but I

18 couldn't rule it out; I don't know.

19 Q Are you generally familiar with

20 the fact that you wanted to get help with

21 getting Time Warner to carry your network?

22 A Yes, as I said I think in response

1 to the gentleman's questions, Mr. Roberts had
2 said, we can be helpful or we can be not so
3 helpful or hurtful.

4 Q And when he offered to be helpful,
5 you didn't say, no, I don't want your help.
6 You wanted his help, didn't you?

7 A Yes.

8 MR. CARROLL: No further
9 questions, Your Honor.

10 JUDGE SIPPEL: Any redirect?

11 MR. PHILLIPS: No, sir, Your
12 Honor.

13 JUDGE SIPPEL: I have no
14 questions. You are free to leave. You are
15 relieved from your obligations.

16 THE WITNESS: Thank you, Your
17 Honor.

18 (Witness excused.)

19 JUDGE SIPPEL: We are quarter of
20 12:00. And that would conclude your case, I
21 take it?

22 MR. LEVY: Your Honor, that

1 concludes our live witnesses. However we
2 intend to offer designated excerpts from some
3 of the depositions of Comcast witnesses as
4 part of our affirmative case. We have reached
5 an agreement with Comcast counsel on an
6 exchange of those designations. They have
7 responded with counter-designations, and we
8 are going to put that package together for
9 Your Honor. So I don't want to formally rest
10 my case at this point.

11 JUDGE SIPPEL: Well, I'll leave
12 the case open for that purpose. But let's
13 move forward with the witnesses.

14 MR. LEVY: Beyond that we are
15 prepared to turn it over to Mr. Carroll.

16 JUDGE SIPPEL: What's your
17 schedule? Do you want to start now? Do you
18 want to wait until we come back from lunch?

19 MR. CARROLL: I'm always at your
20 pleasure. What would you like to do? We can
21 start now, but we are probably going to break
22 for lunch pretty soon. I have a witness all

1 set to go. And I've given the other side a
2 witness list. Or if you want to take the
3 lunch break, we can start up after that.

4 JUDGE SIPPEL: What is it,
5 quarter to 12:00? I don't know, we should
6 really take some kind of a short break anyway.
7 And if we take a short break that is going to
8 take us until about 12:45. How long do you
9 think - well, you won't have very long with
10 the witnesses, you have cross-examination.

11 Well, I think it would make sense
12 to break for lunch now. We have to take a
13 break anyway. So it's quarter to 12:00. If
14 we start at 1:15, do we think we can get
15 finished at a decent hour without staying too
16 late tonight? Or do we have to come back at
17 1:00?

18 MR. LEVY: Your Honor, I think
19 that question probably ought to be addressed
20 to us. Because most of the time that has been
21 taken so far has been taken by Comcast.

22 JUDGE SIPPEL: That's correct.

1 MR. LEVY: In cross-examination
2 of our witnesses.

3 JUDGE SIPPEL: That is correct.

4 MR. LEVY: We are determined to
5 be much more brief than Comcast lawyers were
6 in our cross-examination, but they do have six
7 witnesses; at least they told us they were
8 going to call six witnesses.

9 So we are somewhat concerned about
10 the pace and how long we need to go to get
11 finished by tomorrow afternoon if we are able
12 to finish by tomorrow afternoon.

13 JUDGE SIPPEL: All right.

14 MR. LEVY: We are going to scale
15 back our cross accordingly, but we are already
16 3-1/2 or 2-1/2 days into the process and
17 virtually all that time has been taken by
18 Comcast's efforts to cross-examine our
19 witnesses.

20 JUDGE SIPPEL: All right. You're
21 eating into your lunch hour. It's 1:00
22 o'clock. We are coming back. We are in

1 recess. There is nobody on the stand, and
2 we'll pick up where we leave off at 1:00
3 o'clock.

4 (Whereupon at 11:51 a.m. the
5 proceeding in the above-entitled
6 matter went off the record to
7 return on the record at 1:00 p.m.)

8 JUDGE SIPPEL: We're on the
9 record. It's 1:00 o'clock. Everybody is here.
10 Mr. Toscano is going to - I guess
11 you are on direct.

12 MR. TOSCANO: Yes, Comcast's
13 first witness is Jonathan Orszag, an expert.

14 JUDGE SIPPEL: Okay, we have a
15 preliminary matter from Mr. Carroll.

16 MR. CARROLL: Yes, Your Honor.
17 Your Honor had asked after the conclusion of
18 Mr. Tagliabue's examination that I select out
19 the pages from the deposition today that we
20 questioned about.

21 JUDGE SIPPEL: Correct.

22 MR. CARROLL: And have those